



JOHN D. FERRERO

STARK COUNTY PROSECUTING ATTORNEY

Stark County Office Building,
110 Central Plaza South, Suite 510
Canton, Ohio 44702
330-451-7897 • Fax 330-451-7965

John L. Kurtzman
Chief Counsel

April 17, 2006

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Kathy Rutledge, Deputy Auditor
Stark County Auditor's Office
110 Central Plaza, South, Suite 220
Canton, Ohio 44702-1410

**Re: Titles Issued for Manufactured Homes
Our File No. M101.00273**

Dear Ms. Rutledge:

I have before me your letter of November 16, 2005 in which you have sought our opinion concerning the surrender to the auditor of titles for manufactured homes put on permanent foundations by their owners. As I understand it, owners of manufactured homes sold before 2000 which were put on permanent foundations were not required to surrender the title to the home and in some cases such titles were not issued. In correcting your records you have found one instance wherein you believe the title to the manufactured home should now be surrendered but for which no title was issued.

Out of that circumstance you have identified three questions. They are:

1. Since the law did not require the title to be surrendered tat the time the manufactured home was originally sold can we require it to be issued and surrendered now?
2. If yes, does [the manufacturer] need to have the titles issued for all of these manufactured homes?
3. How does [the manufacturer] address the sales tax issue if these titles must be issued?

In further discussions you have indicated that, prior to 2000, when a manufactured home was discovered to have been attached to a permanent foundation and otherwise altered so as to lose its character as a motor vehicle, the auditor's practice was to re-categorize the property and assess it as real estate. Minimal notice was given to the owners of such homes and, thereafter, the owners were under a duty to fulfill the requirements of such other laws as may have applied to their circumstances.

The Attorney General of the state of Ohio has had occasion to opine of this topic in 1993 (93 OAG 078), enclosed, wherein he stated the following:

[P]ursuant to the scheme [of statutes in effect at that time] an item of real property that meets the definition of manufactured home contained in R.C. 4501.01(O) will never be treated as real property. In order to achieve real property status, a manufactured home first must be altered in such a way that it loses its character as a manufactured home and no longer meets the statutory definition set out in R.C. 4501.01(O). (Citations omitted.) If, after such alteration, it meets the definition of real property in R.C. 5701.02, the home may be taxed as real property. The question of whether a particular property should be taxed as real property or a manufactured home is a factual determination that is made, in the first instance, by the county auditor.

The issue of surrender of titles to the county auditor, as you noted, did not arise under the statutory scheme in effect at the time. While the auditor might make a factual determination that a manufactured home was to be categorized as real estate, the surrender of the title to the clerk of courts was the obligation of the owner.

The Attorney General opined, thus:

Pursuant to R.C. 4504.11 and 4505.18, therefore, the owner must surrender the certificate of title of a manufactured home any time that a county auditor determines that the home has been altered sufficiently to classify it as real property. *The surrender of the title is the result of the transformation of the manufactured home to real property status and not, as suggested by your question, the cause of the transformation.* Nonetheless, the surrender of the title is mandatory under Ohio law. This conclusion is reinforced by the fact that transfers, tax liens, and security interests for real property and fixtures on real property must be recorded by entirely different instruments than apply to motor vehicles. . . . The protection of transferees and both private and public creditors, therefore, requires that if a manufactured home has become real property, the certificate of title documenting it as a motor vehicle must be surrendered. (Emphasis added.)

At that time, in other words, the categorization of a manufactured home as real estate triggered an obligation on the part of the owner to surrender the title to the clerk of courts who then canceled the title, if lien holders consented. No further obligations were placed on the county auditor with respect to the surrender of the title. All other aspects of the real estate classification were between the owner and the clerk of courts and such other persons as may have had an interest in the manufactured home. We can reasonably surmise that the changes made to the statute in 2000 were, at least partially, in response to circumstances arising out of the Attorney General's conclusions expressed in Opinion No. 93-078.

Kathy Rutledge, Deputy Auditor
April 17, 2006
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With respect to the sales tax aspect of the titles not having been issued, we note that the auditor had, at that time, no responsibility for assessing or collecting the sales tax. That issue fell to the vendor, the buyer, the clerk of courts, and the tax commissioner. We can ascertain no responsibility on the part of the auditor to pursue the collection of that tax.

Accordingly, we conclude that the auditor need not require the surrender of title for a manufactured home for which a determination was made (prior to the effective dates of the 2000 statutory changes) that it was to be categorized and taxed as real estate. The second question is, therefore, moot. Except as may now arise under transactions occurring after January 1 of 2000, the third question is not within the scope of the auditor's statutory responsibilities. All the auditor needs to do in the current instance is simply apply the correct category to the property and continue to assess it appropriately.

I trust this answers your questions. If I may be of further service, please do not hesitate to write or call.

Very truly yours,

A handwritten signature in cursive script, reading "David M. Bridenstine".

David M. Bridenstine
Assistant Prosecuting Attorney

DMB:dmb

Encl.

*3421 1993 Ohio Op. Atty. Gen. No. 93-078
Office of the Attorney General
State of Ohio

Opinion No. 93-078
December 30, 1993

Syllabus:

When a manufactured home has been altered in such a way that it no longer meets the definition in R.C. 4501.01(O) of manufactured home and, instead, has become real property as defined by R.C. 5701.02, the altered manufactured home is no longer a motor vehicle under R.C. 4505.01(A); therefore, the provisions of R.C. 4505.11(A) and R.C. 4505.18 require the owner of such an altered manufactured home to surrender the certificate of title.

John W. Baker
Knox County Prosecuting Attorney
Mt. Vernon, Ohio

You have requested an opinion regarding whether the owner of a manufactured home must surrender his or her manufactured home title in order to have real property status for tax purposes.

Manufactured Homes--Taxation

R.C. 4501.01(O) defines a manufactured home as follows:

any nonself-propelled vehicle transportable in one or more sections, [with specified dimensions], and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein.

R.C. 4503.06(A) provides that "[a]ll manufactured homes ... are subject to an annual tax, payable by the owner, for the privilege of using or occupying a manufactured home in this state." R.C. 4503.06(J) further provides that "[t]he taxes levied and revenues collected under this section shall be in lieu of any general property tax and any tax levied with respect to the privilege of using or occupying a manufactured home in Ohio except as provided in sections 4503.04 [a use tax] and 5741.02 [a use tax levied on personal property] of the Revised Code."

(Emphasis added.) R.C. 4503.06(F) exempts certain manufactured homes from the tax levied by R.C. 4503.06. None of the exemptions, however, involve manufactured homes taxable as real property. (FN1)

Thus, pursuant to the scheme set out in R.C. 4503.06, an item of property that meets the definition of manufactured home contained in R.C. 4501.01(O) will never be treated as real property for tax purposes. In order to achieve real property status, a manufactured home first must be altered in such a way that it loses its character as a manufactured home and no longer meets the statutory definition set out in R.C. 4501.01(O). 1977 Op. Att'y Gen. No. 77-099; 1969 Op. Att'y Gen. No. 69-128. (FN2) If, after such alteration, it meets the definition of real property in R.C. 5701.02, the home may be taxed as real property. (FN3) The question of whether a particular property should be taxed as real property or a manufactured home is a factual determination that is made, in the first instance, by the county auditor. 1952 Op. Att'y Gen. No. 1470, p. 391; accord Op. No. 77-099; Op. No. 69-128.

Manufactured Homes--Certificates of Title

Pursuant to R.C. 4505.01(A)(2), a manufactured home as defined in R.C. 4501.01(O) is considered a motor vehicle for purposes of R.C. Chapter 4505, governing certificates of title for motor vehicles. Accordingly, a manufactured home cannot be purchased or transferred without a certificate of title, manufacturer's or importer's certificate, or a salvage certificate. See R.C. 4505.03-.05; R.C. 4505.18-.19. A security interest in a manufactured home, unless it is being held in inventory, can be perfected only by notation on the certificate of title, not by filing a security interest pursuant to R.C. Chapter 1309 of the Ohio Uniform Commercial Code. R.C. 4505.13. Further, the title to a manufactured home cannot be transferred unless all taxes due under R.C. 4503.06 have been paid. R.C. 4503.061(C); see also 1991 Op. Att'y Gen. No. 91-059 at 2-288 to 2-289.

*3422 The surrender of certificates of title for motor vehicles, including manufactured homes, is governed by R.C. 4505.11. R.C. 4505.11(A) provides that an owner of a motor vehicle shall surrender the certificate of title to the clerk of the court of common pleas when a motor vehicle is "dismantled, destroyed or changed in such a manner

that it loses its character as a motor vehicle, or changed in such a way that it is not the motor vehicle described in the certificate of title...." With the consent of any lien holders, the clerk must then cancel the title. (FN4)

Relationship of Certificate of Title to Property Status of Manufactured Home

As discussed previously, in order to attain real property status, a manufactured home must be altered in such a way that it loses its character as a manufactured home as defined in R.C. 4501.01(O). Such an alteration would also remove it from the definition of motor vehicle in R.C. 4505.01(A)(2). Pursuant to R.C. 4505.11 and 4505.18, therefore, the owner must surrender the certificate of title of a manufactured home any time that a county auditor determines that the home has been altered sufficiently to classify it as real property. The surrender of the title is the result of the transformation of the manufactured home to real property status and not, as suggested by your question, the cause of the transformation. Nonetheless, the surrender of title is mandatory under Ohio law. This conclusion is reinforced by the fact that transfers, tax liens, and security interests for real property and fixtures on real property must be recorded by entirely different instruments than apply to motor vehicles. See generally R.C. 1309.32 (fixture filings); R.C. Chapter 5301 (real property conveyances and encumbrances); R.C. Chapter 5721 (delinquent property taxes). The protection of transferees and both private and public creditors, therefore, requires that if a manufactured home has become real property, the certificate of title documenting it as a motor vehicle must be surrendered.

Conclusion

It is therefore my opinion and you are hereby advised that, when a manufactured home has been altered in such a way that it no longer meets the definition in R.C. 4501.01(O) of manufactured home and, instead, has become real property as defined by R.C. 5701.02, the altered manufactured home is no longer a motor vehicle under R.C. 4505.01(A); therefore, the provisions of R.C. 4505.11(A) and R.C. 4505.18 require the owner of such an altered manufactured home to surrender the certificate of title.

Lee Fisher

Attorney General

(FN1) R.C. 4503.06(F)(1) provides an exemption for manufactured homes that are taxable as personal property used in business pursuant to R.C. 5709.01, except those rented and used as residences. Manufactured homes on which the manufactured home tax has already been paid for the year are exempt under R.C. 4503.06(F)(3). R.C. 4503.06(F)(2) deals with travel trailers, not with manufactured homes. Although not a model of clarity, this provision appears not to be an exemption at all, but rather a requirement that, in situations other than those listed, travel trailers should be treated as manufactured homes for purposes of the tax. R.C. 4503.06(F)(3) exempts manufactured homes that bear license plates issued by other states, unless such homes remain in Ohio longer than thirty days.

(FN2) The statutory definition of manufactured home has been amended since these opinions were written. Thus, the current test of whether a particular home meets the definition must take into account the changes in the statute and should not be taken directly from prior opinions of the Attorney General.

(FN3) The determination of whether a property tax applies to a particular item of tangible property requires an analysis of whether that property is classified as real or personal property pursuant to the definitions in R.C. 5701.02-.03. Personal property can be transformed into real property when affixed to the land in such a way as to become accessory to and parcel of the land. See *Zangerle v. Republic Steel Corp.*, 144 Ohio St. 529, 60 N.E.2d 170 (1945) (syllabus, paragraph four) (setting out the test for conversion to real property); *Teaff v. Hewitt*, 1 Ohio St. 511 (1852). Once a manufactured home ceases to be a manufactured home and is no longer subject to R.C. 4503.06, it becomes subject to this traditional analysis. Thus, it may be taxable either as personal property or as real property, depending on its characteristics after alteration.

***3423** (FN4) Failure to surrender the title is an offense punishable by two hundred dollars and/or ninety days imprisonment. R.C. 4505.18(D); R.C. 4505.99(C). Use of a title that should have been surrendered to "[k]nowingly obtain goods, services, credit or money" is an offense punishable by five thousand dollars and/or

imprisonment in the county jail or penitentiary.
R.C. 4505.19(D); R.C. 4505.99(D).